competition. SWBT's entry into the long-distance market at this time would also undermine its incentive to cooperate in the development of local competition.

SWBT has posited a public interest test so narrow that it would be superfluous. It asserts that "Congress viewed satisfaction of [the checklist] requirements, and *only* these requirements, as the appropriate threshold test for full Bell company entry into long distance markets." SWBT Br. 56. This position is completely at odds with the Act. Indeed, SWBT is simply attempting to resurrect a proposed amendment that was overwhelmingly *rejected* by Congress. Congress required the Commission to determine not only whether the BOC satisfied the threshold requirement of full implementation of the competitive checklist, but also whether its entry would be consistent with the public interest.

Section 271(d)(3) mandates that the Commission "shall not approve" an application "unless it finds" that (in addition to compliance with the checklist and section 272's regulatory requirements) "the requested authorization is consistent with the public interest, convenience, and necessity." Three conclusions are immediately apparent from this mandate:

First, Congress determined that premature BOC entry into the in-region long-distance market would harm the public interest. This is evident from its decision to condition entry on satisfaction of each of the requirements set forth in 271(d)(3), and its rejection of proposals to permit BOC entry by a date certain.[12] Although section 253 immediately preempts any state law that prohibits any entity from offering local service, and the procedural portions of section 251

[12] *See* S. Rep. No. 104-23, at 67 (1995) ("Additional Views of Sen. Hollings") (earlier draft versions of the Act "set a 'date certain' for entry by the RBOCs into the long distance market").

impose a timetable on the Commission to implement substantive local competition provisions, no such immediate action was mandated for in-region long-distance service. To the contrary, sections 271 and 251(g) codify the consent decree's line of business restrictions for in-region long-distance service, while allowing the BOCs to compete immediately in the out-of-region long- distance markets where they have no bottleneck power. Thus, Congress plainly recognized the unique competitive dangers presented if a BOC were permitted to expand into the interLATA market in the same region in which it controlled local telephone service, and the need to restrict the BOCs' ability to abuse their bottleneck control of essential facilities.[13]

SWBT's assertion that BOC entry into the in-region interLATA market "presumptively" furthers the public interest and must be granted unless there is "clear and convincing evidence" of harm to consumers (SWBT Br. 53-55), is directly at odds with the statute. The statute embodies exactly the opposite presumption: it imposes a "general limitation" prohibiting BOCs from entering this market, § 271(a), and the Commission may "not approve" BOC entry into the

[13] Congress was not writing on a clean slate. Years of anticompetitive abuse of the BOCs' local bottleneck power ultimately resulted in the long-distance restriction imposed by the consent decree. The Department of Justice had demonstrated that the BOCs had prevented competitors from obtaining access to bottleneck facilities essential to competition. *United States v. AT&T*, 524 F. Supp. 1336, 1352-57 (D.D.C. 1981). The radical remedy of divestiture was necessary to achieve "the decree's objective of sharply limiting the ability of businesses with bottleneck control of local telephone service to utilize their monopoly advantages to affect competition in competitive markets." *United States v. Western Elec. Co.*, 797 F.2d 1082, 1088 (D.C. Cir. 1986). As the corollary of divestiture, the court also prohibited the BOCs from offering interexchange service. The court found, based on extensive trial evidence, "clear, and indeed overwhelming, procompetitive justifications" for this interexchange restriction. *See United States v. AT&T*, 552 F. Supp. 131, 189 (D.D.C. 1982) ("MFJ Opinion"), *aff'd mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

in-region interLATA market "unless it finds" that "the requested authorization is consistent with the public interest." § 271(d)(3).[14]

Second, the test chosen by Congress requires the Commission to conduct a comprehensive, full-scale analysis to determine whether and when BOC entry into the in-region interLATA market would in fact be consistent with the public interest. Both the Act's supporters and its opponents expected a broad inquiry by the Commission and the Justice Department. *See* S. Rep. No. 104-23, at 62, 67, 70 (1995).

The public interest test has long governed the regulatory actions of federal agencies and has consistently been interpreted as authorizing agencies to develop a regulatory standard that advances the "broad aims" of the relevant legislation. *See, e.g., ICC v. Parker,* 326 U.S. 60, 69 (1945); *ICC v. RLEA,* 315 U.S. 373, 376 (1942); *FCC v. Pottsville Broadcasting Co.,* 309 U.S. 134, 138 (1940). Against that background, SWBT nevertheless argues that the Commission is precluded from considering the extent of actual local competition or the impact of BOC expansion into in-region interLATA markets on incipient competition in local markets, as well as its impact on the long-distance market. But if Congress wanted the Commission to avoid judgments relating to the very purpose of the Act, as SWBT maintains, Congress surely would

[14] The FCC decisions cited by SWBT merely stand for the proposition that generally the burden of producing evidence is placed on parties opposing competition. But this presumption does not apply here, because the statute explicitly requires that several criteria be met before long-distance entry is permitted. Thus, SWBT's additional suggestion that Congress intended "concurrent[]" entry into local and long-distance markets (SWBT Br. iii) is inconsistent with the fundamental structure of the Act. SWBT has the burden to show that its expansion into the long-distance market -- which is already competitive -- will create benefits that outweigh the anticompetitive effects its entry would have on local and other markets.

not have chosen the public interest standard. Moreover, in authorizing the Commission to undertake a searching public interest inquiry, Congress gave no indication that it was solely or even primarily interested in the long-distance market.[15] The pre-entry conditions of section 271 are designed to ensure that the BOCs will not provide in-region long distance service before the process established by sections 251 and 252 is complete and actual competition has developed, thereby neutralizing the BOCs' incentive and ability to discriminate against competing carriers.[16] The public interest test must be responsive to that central purpose.

Third, given the enormous advantages of long-time incumbency and the obstacles facing CLECs, and in light of the history of the failure of regulation alone to deal with the problems associated with bottleneck monopoly, Congress determined that regulation is not a substitute for effective competition in preventing bottleneck abuse.[17] Otherwise, Congress would have

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[15] SWBT disingenuously asserts that "Congress prohibited the FCC from imposing a local competition requirement of the sort that Congress itself rejected." SWBT Br. 55. In reality, Congress both declined to mandate a market share requirement and also declined suggestions that the Commission be "prohibited" from considering local market shares. *See* 141 Cong. Rec. S7942, S7964 (June 8, 1995) (statement of Sen. Craig). It does not follow from Congress' decision not to legislate a qualitative or quantitative test that the amount of local competition is *irrelevant*, as SWBT suggests. Congress simply concluded that the Commission (and the Department) would be better suited to decide how much competition is sufficient.

[16] Moreover, as noted in Part I above, Track A of section 271 independently requires actual competition in order to establish that the checklist requirements have been "provided" and "fully implemented."

[17] Historically, regulation alone proved inadequate to prevent the BOCs from abusing their market power. *See MFJ Opinion*, 552 F. Supp. at 167-68. Despite the efforts of state regulatory commissions and this Commission, regulatory remedies proved to be uncertain, slow, and costly -- even where there was blatant discrimination in violation of clear regulatory requirements, as demonstrated when MCI successfully challenged the Bell System's denial of equal access in

(continued...)

conditioned BOC entry solely on compliance with the regulatory safeguards in section 272. Instead, Congress adopted both section 271(d)(3)(A) (the checklist requirement) *and* section 271(d)(3)(C) (the public interest requirement) to assure that effective *market constraints* would be in place in the upstream (local) market before entry into the downstream market was permitted. To be sure, regulatory safeguards play a significant role in controlling and remedying abuse of any residual bottleneck power the BOCs may have after they enter the interexchange market, and regulators can and should enforce them aggressively. But Congress understood that the BOCs can abuse their local monopoly power to discriminate against competitors and to cross-subsidize their competitive services in ways that regulators cannot effectively control. For these reasons, Congress made the judgment that full implementation of the competitive checklist will not by itself ensure that local competition will be achieved and that the BOCs' local monopolies will be broken.

That section 271 requires actual competition and a broad-scale examination of the competitive effect of BOC entry is strongly reinforced by the Act's legislative history. Congress considered and rejected an amendment stating that full implementation of the checklist would be sufficient to permit a BOC to enter the in-region interLATA market. In the Senate, McCain Amendment 1261 would have amended Senate Bill 652 with the following language:

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[17](...continued)
knowing violation of FCC rules. *E.g., MCI Communications Corp. v. AT&T*, 708 F.2d 1081 (7th Cir.), *cert. denied*, 464 U.S. 891 (1983).

> Full implementation of the checklist found in subsection (b)(2) shall be deemed in full satisfaction of the public interest, convenience, and necessity requirement of this subparagraph.

141 Cong. Rec. S8043 (June 8, 1995).

Proponents of this limitation recognized that under the Act, even if an "applicant meets the first two" requirements for interLATA service, "they still have to get over the hurdle of the third test, which is the public interest test." 141 Cong. Rec. S7970 (June 8, 1995) (statement of Sen. Packwood). Proponents warned that unless the McCain Amendment was passed, the public interest test would give the Commission broad discretion to decide whether BOC entry furthered the public interest and should be approved.[18] Opponents of the Amendment argued that the Commission's discretion in applying the public interest requirement should be preserved for precisely this reason. As Senator Kerry explained:

> The most difficult thing to have happen in the law that we are deliberating here is the competition at the local level. . . . I do not know if the checklist is going to work. . . . [The public interest test is a separate requirement] to make certain that in fact we do get competition at the local level.

141 Cong. Rec. S7970 (June 8, 1995). The latter view was overwhelmingly shared by the Senate. The McCain amendment was rejected by a vote of 68-31. *Id.* at S7971.

The broad interpretation of the public interest test was reaffirmed by the Conference Committee,[19] which adopted "the basic structure of the Senate bill," including its separate public

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[18] *See, e.g.,* 141 Cong. Rec. S7970 (statement of Sen. Packwood); *id.* at S7960 (statement of Sen. McCain).

[19] The House had passed H.R. 1555, which omitted the Senate's public interest test and the requirement that "substantial weight" should be given to the Justice Department's views. *See*

(continued...)

interest requirement.[20] Nor is it the case that Congress was silent about the kinds of factors that properly should be considered in formulating the public interest standard. To the contrary, the Act reaffirmed the Justice Department's role in assessing the public interest. The Conference Committee made clear that the test involved considerations of competitive impact and other market factors, which could be measured using standards such as whether "there is no substantial possibility that the BOC or its affiliates could use their monopoly power to impede competition in the market such company seeks to enter." Conf. Rep. No. 104-458, 104th Cong., 2d Sess. at 149 (Jan. 31, 1996).

Equally important, Congress understood that the promise of in-region entry into the interLATA market would serve as an incentive for the BOCs to enter into, and fully implement, access and interconnection agreements with new competitors in their local markets. *See* 141 Cong. Rec. H8282 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley) ("the key to this bill is the creation of an incentive for the current monopolies to open their markets to competition"). The only business incentive that the BOCs have to adopt even the facade of cooperation with new local competitors is their desire to provide interexchange services. This Commission has recognized the BOCs' contrary incentives, noting both the inequality of bargaining power and the BOCs' ability and incentive "to discourage entry and robust competition" in local markets.

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[19](...continued)
H.R. Rep. No. 104-204, pt. 1 (1995) (reporting H.R. 1555); 141 Cong. Rec. H8445 (Aug. 4, 1995) (amending H.R. 1555). The House approach was rejected by the Conference Committee. *See* H.R. Conf. Rep. No. 104-458, at 149 (1996).

[20] H.R. Conf. Rep. No. 104-458, at 149 (1996).

Local Competition Order, ¶ 10. By eliminating the BOCs' incentive to cooperate, premature entry into the long-distance market would therefore harm local as well as long-distance competition.

Thus, analysis of the *actual state of competition* in the upstream local market is a critical component of the section 271 inquiry.[21] Congress viewed the existence of an effective *market constraint* -- and not simply regulatory oversight or theoretically open markets -- as a critical precondition to BOC entry into the interLATA market. One of the principal proponents of the Senate and conference bills stated:

> The basic thrust of the bill is clear: competition is the best regulator of the marketplace. Until that competition exists, monopoly providers of services must not be able to exploit their monopoly power to the consumer's disadvantage. . . . Telecommunications services should be deregulated *after, not before*, markets become competitive.

142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) (emphasis added); *see id.* S697 (statement of Senator Kerrey). As Senator Dorgan, a member of the Senate Commerce Committee, explained, "The fact is that the long distance market is a truly competitive market.

[21] SWBT's suggestion that the Commission's consideration of local competitive conditions is forbidden by section 271(d)(4) (prohibiting the Commission from "limit[ing] or extend[ing] the terms used in the competitive checklist") is baseless. That section merely means that the Commission may not modify -- either by limitation or extension -- an existing checklist item. Indeed, if SWBT's contrary reading were correct, section 271(d)(4) would forbid the Commission from even considering whether BOC entry would injure competition in long-distance and local markets, because this would purportedly "extend . . . the checklist." This obviously was not Congress' intent, and nothing in section 271(d)(4) precludes the Commission from undertaking the traditional public interest inquiry mandated by Congress.

We risk damaging that competitive market if the RBOCs are permitted to enter the long distance market prematurely." 141 Cong. Rec. S8464 (June 15, 1995).[22]

B. The Absence of Effective Local Competition in Oklahoma.

Judged by virtually any measure, local competition is practically non-existent in Oklahoma. For example:

- The minutes of use currently handled by CLECs in Oklahoma are a minuscule proportion of those handled by SWBT. As a long-distance carrier, MCI terminates calls to SWBT, other incumbent LECs, and CLECs in Oklahoma. MCI terminated only 334,607 minutes of long-distance calls to Oklahoma CLECs in February 1997, out of a total of over 51 million terminating minutes.[23] These figures, which provide a rough measure of the state of competition, indicate that CLECs are servicing only about 0.65 percent of the minutes of use in the state.

- As of last month, CLECs had yet to obtain even one unbundled loop from SWBT.[24] By way of comparison, SWBT services well over 1.5 million lines in Oklahoma.[25]

CLECs have a long way to go before they will be able to pose a serious competitive challenge to SWBT's command of the market. *See* Statement of Frederick R. Warren-Boulton on Behalf of AT&T & MCI, ¶ 56 (filed with the OCC) (SWBT Appendix IV, Tab 21).

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[22] Members of the House shared the same intent and understanding. *E.g.*, 142 Cong. Rec. E204 (Feb. 23, 1996) (statement of Rep. Forbes) ("[B]efore any regional Bell company enters the long-distance market, there must be competition in its local market. That is what fair competition is all about."); 141 Cong. Rec. H8458 (Aug. 4, 1995) (statement of Rep. Bunning) ("We should not allow the regional Bells into the long distance market until there is *real* competition in the local business and residential markets.") (emphasis added).

[23] *See* Agatston Aff. ¶ 7.

[24] *See* Agatston Aff. ¶ 23.

[25] *See* FCC, *Statistics of Communications Common Carriers,* pt. 2, table 2.3 (1995/1996 ed.) (listing presubscribed lines serviced by SWBT in Oklahoma as of Dec. 30, 1995).

SWBT insists that competition *will* emerge at some point in the future. *E.g.*, SWBT Br. 91-94. But using the same factors that SWBT uses to evaluate long-distance competition, *see* SWBT Br. 57-62 (discussing price and marginal cost), it is clear that no significant competition exists today. If local competition was really getting off the ground, it would show in the form of substantial changes in prices and market share -- comparable to the dramatic changes that have occurred in the long-distance market. SWBT makes no effort to establish that its profit margin is anywhere near the level it would be in a competitive market, nor even to show that its profit margin has begun to decline as a result of the beginnings of competition.

SWBT's claim that significant competition in the local market is at hand is wildly overstated. It asserts that "a significant number of access lines and revenues are within easy reach" of CLECs, based on the number of customers within 500 or 1,000 feet of a carrier's fiber ring. *See* SWBT Montgomery Aff. ¶ 5. SWBT, of course, already has physical access to each customer's premises. CLECs do not. CLECs entering the market have no pre-existing access to any buildings.[26] Moreover, SWBT's statistics relate only to the Tulsa and Oklahoma City markets, completing ignoring vast areas of the state.

What SWBT proclaims as vibrant local competition is, in fact, only the most rudimentary and isolated beginnings of local competition. Indeed, there is no facilities-based residential competition in Oklahoma today. That minimal competition has begun in a few localities or niche markets for a handful of business customers obviously does not provide any assurance that most

[26] Obtaining premises access is a very difficult and time-consuming process for CLECS. Agatston Aff. ¶ 17.

consumers in Oklahoma will have the benefit of effective, facilities-based local competition. To the contrary, "the prospects for robust local competition" remain "bleak in the short term and highly uncertain in the long term." Hatfield Aff. p. 8; *see also* Affidavit of Robert E. Hall, ¶ 3 (ex. F hereto); Warren-Boulton Aff. ¶¶ 55-56.[27] The absence of permanent pricing, effective OSS, procedures and costs for ordering local loops and other unbundled elements, and full implementation of the competitive checklist serves only to further delay actual competition.

C. Competition in the Long-Distance Market.

SWBT goes to elaborate lengths to downplay the intensity of competition in the long-distance market. *See* SWBT Br. 57-62. Notwithstanding SWBT's protestations, the long-distance market is among the most competitive in American business. As discussed in detail in Professor Hall's affidavit, strong competition from literally hundreds of long-distance companies has produced a consistent pattern of falling prices and changing market shares. *See* Hall Aff. ¶¶ 4-74. Indeed, since 1984, the price of long-distance service has fallen 70 percent in real terms, even taking into account reductions in access charges. *See* Warren-Boulton Aff. ¶ 66; Hall Aff. ¶¶ 10-16.[28]

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[27] *See generally* Hatfield Assoc., *The Enduring Local Bottleneck II* (April 30, 1997) (ex. H hereto) (discussing limited prospects for local competition).

[28] SWBT contends that the three major carriers have engaged in lock-step price increases for basic rates. *See* SWBT Br. 57-60. But this is selective history at its worst. Any upward price adjustments took place in the overall context of a 70% reduction in long-distance prices over the last 13 years. Thus, they were accompanied by dozens of price reductions coupled with a variety of new and innovative long-distance plans that offered savings to all types of long-distance customers. A small proportion of MCI customers pays basic rates, and these are infrequent callers with high costs per call. Hall Aff. ¶¶ 22-34, 41-44.

If the long-distance market were an oligopoly with inflated prices, as SWBT appears to claim, one would have expected SWBT to be aggressively entering the long-distance market *outside its region,* which it is already permitted to do, and undercutting current prices by substantial margins. That is particularly true since SWBT has been able to obtain long-distance services for resale at a wholesale discount of 80 percent. *See* Warren-Boulton Aff. ¶ 59. SWBT elects to direct its arsenal to the in-region market because only in its own market can it leverage its bottleneck power against would-be competitors.[29]

D. The Effects of SWBT's Entry Into Long-Distance Markets Before Local Competition Exists.

SWBT makes the remarkable claim that its entry into the long-distance market poses no threat to competition in that market. *See* SWBT Br. 73-94. This assertion is contrary to basic laws of economic behavior, to the nation's experience with the Bell monopoly, and to the ample evidence of on-going discrimination by ILECs. The restriction on BOC participation in the long-distance market was based on overwhelming evidence that the BOCs used their local bottlenecks to impede long-distance competition. This restriction gave upstream firms (the BOCs) with bottleneck control incentives to cooperate with all downstream customers (long-distance carriers) to increase demand for both long-distance services and local access. *See generally* Hall Aff.

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[29] Finally, SWBT's claim that its entry into in-region, interLATA services would provide windfall economic benefits to Oklahoma is based on faulty reasoning and borders on blatant pandering. *See* SWBT Br. 70-71. In addition to other methodological errors, SWBT's consultants simply *assumed* that its entry would reduce long-distance prices by 25% and did not consider the potentially harmful effects of SWBT's long-distance entry on local competition. *See* Hall Aff. ¶¶ 173-79; Warren-Boulton Aff. ¶¶ 64-65.

¶ 80. As telecommunications networks and their interfaces grow ever more complex, this cooperation has become increasingly important to consumer welfare. *See* Hatfield Aff. at 8-15; Hall Aff. ¶¶ 100-01.

SWBT's proposed entry as a vertically-integrated competitor in the long-distance market would fundamentally change its relationship with long-distance carriers while it still has bottleneck control of inputs critical to local and long-distance markets. "It is distinctly not in Southwestern Bell's shareholders' interest to cooperate with a long-distance carrier if Southwestern Bell is also in the long-distance market -- hobbling rivals raises shareholder value. Businesses compete rather than cooperate with their rivals." Hall Aff. ¶ 101. These disincentives to cooperate with direct competitors were well documented in the AT&T litigation; they are evident today in downstream markets (such as local toll, voicemail, and pay phones), where the conduct of vertically integrated BOCs uniformly suggests that the BOCs "serve their shareholders properly by cooperating as little as possible," Hall Aff. ¶ 106; Warren-Boulton Aff. ¶ 24; and they are evident in Connecticut, where the local carrier, SNET, has now entered the long-distance market. *See* Hall Aff. ¶¶ 149-55; Warren-Boulton Aff. ¶¶ 22-23.

SWBT relies on the nondiscrimination and record-keeping requirements in the Act and in the Commission's Non-Accounting Safeguards Order[30] in an effort to show that it will be impossible for SWBT to discriminate against other carriers. As Congress recognized, however, regulatory measures cannot effectively restrain BOCs from acting in accordance with their

[30] CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. Dec. 24, 1996).

anticompetitive incentives. The Commission has also recognized that "no regulatory scheme can completely prevent or deter discrimination, particularly in its more subtle forms." Non-Accounting Safeguards Order, ¶ 19. Regulation cannot enforce cooperation nor, as a practical matter, can regulation prevent acts of omission, such as failure to treat unaffiliated and affiliated companies the same with respect to R&D projects, failure to fund capital projects that benefit a long-distance rival at the expense of an affiliate, and failure to cooperate in resolving complex and changing technical problems. *See* Warren-Boulton Aff. ¶¶ 16-18; Hall Aff. ¶ 141; *see also* Hatfield Aff. pp. 21-27.

In any event, SWBT has not shown that it has met the requirements of section 272. Section 271(d)(3)(B) requires SWBT to establish in its application that it will comply with the separation and nondiscrimination requirements of section 272 in providing in-region long-distance service. But SWBT simply parrots the language of section 272 and the Commission's implementing regulations. As the record in the Commission's section 272 rulemaking demonstrates, the BOCs' interpretation of the requirements of section 272 differs enormously from the plain language and plain purpose of these requirements. Whether SWBT would comply with section 272 can be evaluated only with a meaningful description of SWBT's plans. This SWBT conspicuously fails to provide, and thus fails to meet its burden to satisfy the requirements of section 272.

In addition to efforts to increase their rivals' costs (and delay any competitive advantages they might achieve) through discrimination, the BOCs can be expected to subsidize their long-distance activities by shifting costs into their monopolized local activities. *See* Hall Aff. ¶¶ 137-

40; Warren-Boulton Aff. ¶ 14; *see also* Non-Accounting Safeguards Order, ¶ 10 ("[A BOC] may have an incentive to allocate improperly to its regulated core business costs that would be properly attributable to its competitive ventures.").

The anticompetitive effects of early BOC entry into long distance will be compounded if the BOCs are permitted interLATA entry while access charges remain far in excess of actual cost. *See* Hall Aff. ¶¶ 119-20. Access charges substantially exceed actual costs. *See* Hall Aff. ¶ 119. While all IXCs are forced to bear the full access charge on every minute of access purchased from the BOC, the incremental cost incurred by the BOC is much lower than the full access charge. This is true even though the BOC long-distance affiliate is required to make an accounting entry imputing a payment to the BOC local company for the entire access charge. *See* Franklin M. Fisher, *An Analysis of Switched Access Pricing and the Telecommunications Act of 1996*, ¶¶ 25-28 (filed with MCI's Reply Comments in CC Docket No. 96-98 (May 30, 1996)) (ex. G hereto). Under current access policies, a BOC integrated into interLATA service would have a substantial cost advantage in competing against other long-distance companies that is entirely unrelated to its cost efficiency or the quality of its products. Market entry by a BOC with competitive advantages wholly unrelated to cost efficiency or product quality would disserve consumer welfare. This artificial advantage would encourage consumers to use a BOC even if it is actually less efficient than other IXCs. *See* Fisher, ¶ 31.

Finally, the impact of SWBT's proposed interLATA service on *local* competition is of paramount importance, for three reasons: First, SWBT's entry would remove the *only business reason that SWBT has to cooperate with emerging local competitors.* Just as SWBT can impede

long-distance competitors through noncooperation, it has the same power to limit and delay the emergence of local competition. Unbundling a BOC's local network is a complex undertaking, and it will be difficult for regulators to determine whether a BOC is truly in compliance with the nondiscrimination and parity requirements of the Act.[31] If SWBT is permitted to receive the "carrot" of long-distance entry before its network is fully unbundled, "its sole business incentive to cooperate in setting reasonable terms, conditions, and operating procedures for local network access by competing local exchange carriers is eliminated." Warren-Boulton Aff. ¶ 9.

Second, providing long-distance services would give SWBT "a potent strategic tool for depriving potential local entrants of much of their anticipated profits from the provision of access." Hall Aff. ¶ 157. If a BOC is not a long-distance carrier, new local carriers can gain local access business as long as their costs are below the BOC's high switched access charges -- the BOC will not find it profitable to implement uniform price reductions in response to emerging (and limited) local competition, and likely would not be permitted to make very targeted reductions in access charges to thwart new local competition. *See id.* As an integrated local/long-distance carrier, however, SWBT can accomplish the latter result by instead using targeted price reductions for bundled local and long-distance services. *See id.*; Warren-Boulton Aff. ¶¶ 8, 36. Providing this power to an incumbent monopoly would significantly enhance its

[31] Although SWBT argues that the Commission would retain the power to revoke SWBT's interLATA authority, revocation is highly unlikely because the Commission would be understandably reluctant to order a BOC to terminate its service to existing customers. *See* Warren-Boulton Aff. ¶ 60.

ability to impede incipient local competition and would also deter entry and investment by potential competitors.

Third, SWBT's premature entry into the long-distance market would substantially shrink the local exchange market available to potential competitors. *See* Hall Aff. ¶ 156. Because of a vibrant market for wholesale long-distance services, SWBT will have the power to provide a full range of long-distance services to each and every one of its customers as soon as it obtains interLATA authority. Warren-Boulton Aff. ¶ 59. In sharp contrast, new entrants in local markets, including long-distance carriers, can provide service to only a minute fraction of all local customers, and construction of ubiquitous networks will take time. Thus, if SWBT is permitted immediate entry into the long-distance market, it could use its exclusive power to provide one-stop shopping, thereby locking in customers who otherwise would be the most likely customers for emerging local competitors. *See* Warren-Boulton Aff. ¶¶ 8, 35, 58-59.

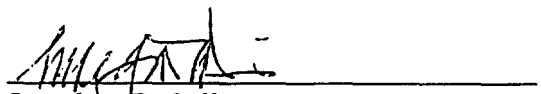
Given the importance of local competition to the "public interest, convenience, and necessity" as defined by the 1996 Act, the only prudent course of action is to permit more competition to develop in Oklahoma before approving SWBT's entry into in-region, interLATA services. The costs of SWBT's premature entry are high, both to interLATA and local competition. In contrast, the potential advantages of early entry by SWBT are non-existent. The already intense competition in the long-distance market will not be measurably increased by adding yet another carrier, especially one that would compete by leveraging its monopoly powers

to increase market share, instead of by competing on price and quality. The public interest would clearly not be served by permitting SWBT to enter the long-distance market in its region at this time.

CONCLUSION

For all the foregoing reasons, SWBT's application should be denied.

Respectfully submitted,



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Dated: May 1, 1997.

CERTIFICATE OF SERVICE

I, Jerome L. Epstein, hereby certify that the foregoing "Comments of MCI Telecommunications Corporation" was served this 1st day of May, 1997, by the methods indicated below, upon each of the following persons:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Ameritech	)	
Michigan Pursuant to Section	)	
271 of the Telecommunications	)	CC Docket No. 97-137
Act of 1996 to Provide In-	)	
Region, InterLATA Services in	)	
Michigan	)	

Exhibit A:
Affidavit of Kenneth C. Baseman and Frederick R. Warren-Boulton on Behalf of MCI Telecommunications Corporation

Affidavit of Kenneth C. Baseman and Frederick R. Warren-Boulton

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Appendix A: Why Traditional Regulation Will Likely Be Ineffective in Controlling Anticompetitive Behavior

Curriculum Vitae of Frederick R. Warren-Boulton

Curriculum Vitae of Kenneth C. Baseman

I. INTRODUCTION

1. Frederick R. Warren-Boulton is a Principal with MiCRA (Microeconomic Consulting and Research Associates, Inc.), a Washington-based economics consulting and research firm specializing in antitrust and regulatory matters. He holds a B.A. degree from Yale University, a Master of Public Affairs from the Woodrow Wilson School of Public and International Affairs at Princeton University, and M.A. and Ph.D. degrees in Economics from Princeton University. From 1972 to 1983, he was an Assistant and then Associate Professor of Economics at Washington University in St. Louis.

2. From 1983 to 1989, Dr. Warren-Boulton served as the chief economist for the Antitrust Division of the U.S. Department of Justice, first as the Director of its Economic Policy Office and then as the Deputy Assistant Attorney General for Economic Analysis. Since leaving the Department of Justice, he has served as a Resident Scholar at the American Enterprise Institute, a Visiting Lecturer of Public and International Affairs at the Woodrow Wilson School at Princeton University, and a Research Associate Professor of Psychology at The American University.

3. Dr. Warren-Boulton's area of specialization is in the economics of industrial organization. His publications are primarily in the application of industrial organization economics to antitrust and regulation, including a number of papers that consider appropriate public policy toward regulated industries, including telecommunications. A complete description of his background and papers can be found in his Curriculum Vitae, a copy of which is attached to this affidavit.

4. Kenneth Baseman is a Principal with MiCRA, an economic consulting firm in Washington, D.C. He received his graduate training in economics at Stanford University. He served as a senior economist in the Economic Policy Office of the Antitrust Division of the Department of Justice where, for over two years, he was a member of the Division's trial staff in US v. AT&T. He has been an economic consultant for thirteen years. His consulting assignments have focused primarily on competitive issues, both in antitrust and regulatory proceedings. His earlier professional papers dealt with entry and competition in a regulated industry with natural monopoly characteristics and were published in the *American Economic Review*, and by the National Bureau of Economic Research and the MIT Press. His more recent publications have focused on the use of non-linear pricing and technical incompatibility by dominant firms to preserve market power in the face of developing competition. He has consulted on telecommunications issues with the Department of Justice, MCI, AT&T, the National Cable Television Association, and WebCel Communications. A copy of his vita is attached to this affidavit.

5. MCI has asked us to analyze the provision of interLATA service in Michigan by Ameritech. We conclude that the provision of interLATA service by Ameritech is premature and should not be allowed now. Ameritech's provision of interLATA service in its own territory must be linked to the level of competition in local telephone markets. Ameritech's control over bottleneck local facilities gives it the incentive and the ability to harm competition in the long-